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September 14, 2004

VIA FACSIMILE AND HAND DELIVERY

BTS-2004-19380-1

Mr. Robert Monniere
Department of Transportation
Bureau of Transportation Statistics
400 Seventh Street, SW
Room 3103, K-2
Washington, DC 20590

DEPT OF TRANSPORTATION
100115
2004 OCT 15 A 9:46

Position Statement of United Parcel Service Co. regarding the Confidential Treatment of Form 41, Schedules B7 and B43 pertaining to Aircraft and Engine Cost Data

Dear Mr. Monniere:

Pursuant to your request during our telephone call on September 9, 2004, United Parcel Service Co. ("UPS"), by its attorneys, submits this Position Statement supporting its request that the Department of Transportation (the "DOT" or the "Department") continue to withhold from public disclosure, UPS' cost data previously reported on Form 41, Schedules B-7 and/or B-43.

The Department has previously accorded these data confidential treatment for a period of ten (10) years and, by a letter dated August 26, 2004, notified UPS that the ten year confidentiality period has expired for certain of the data and that these data would be released on October 1, 2004. It is UPS' position that even though the data are ten years old, they are so sensitive and confidential that their release would still do competitive harm to UPS. UPS continues to acquire aircraft and engines of the type which are the subject of the relevant data, even though it is ten years old. This fact makes the release of the data as harmful to UPS today as it would have been ten years ago.

On September 9, 2004, in addition to our conversation with you in which we discussed UPS' objection to the release of the data, we also spoke with Mr. Buzz Rife regarding this subject and our objections. Importantly, from these conversations we learned that the cost data

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at issue currently remains under seal and, given our objections, the Department will not make any UPS cost data available to the public until the Department addresses UPS' concerns. We appreciate this continued protection and we request that we be notified immediately should these conditions change.

UPS objects to the release of these data and requests that the Department extend confidentiality period indefinitely or, at a minimum, for another ten (10) years. At the time the Department initially granted confidential treatment for a period of ten (10) years, UPS was uncertain whether that length of time would be adequate; however, upon reviewing the situation as it currently exists, UPS is convinced that the release of these data, even though ten years old, would cause UPS substantial injury because the data remain commercially sensitive. Withholding the data from public disclosure is also consistent with the Freedom of Information Act (5 U.S.C. 552) and the precedent thereunder.

Specifically, the information for which UPS seeks further protections consists of cost and cost-related data pertaining to airframe and aircraft engine acquisitions, inventory and retirement. Data regarding these costs are a major portion of an air carriers' business expenses and, as such, the data is treated by a carrier in the most restrictive and sensitive manner. The reasons why these cost and price data are commercially sensitive to a degree which require that they continue to be withheld from public disclosure are as follows:

- Disclosure of the data diminishes competition among the major aircraft manufacturers; engine manufacturers, and new and used aircraft owners and lessors who can use the commercially sensitive data to closely track UPS' acquisition and retirement costs;
- Disclosure of the data impairs competition among competing domestic and foreign airlines in the international arena, because United States airlines are required to reveal major elements of their costs structures when their foreign competitors are not; and
- The Securities and Exchange Commission has determined that these data should be withheld from public disclosure. *See* 17 C.F.R. § 230.406 and 17 C.F.R. § 200.80 *et seq.* *See also* SEC Division of Corporation Finance, Staff Legal Bulletin No. 1, Feb. 28, 1997 (with Addendum, July 11, 2001) (stating that typical documents granted confidential treatment include pricing terms).

UPS requests that the data be withheld from public disclosure by the DOT, pursuant to Exemptions 3 and 4 of the FOIA (5 U.S.C. 552 (b) (3) and (4)). Under Exemption 3 of the FOIA, information in agency records may be withheld if it is specifically exempted from disclosure by a statute, provided that the statute "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding, or refers to particular types of matters to be withheld." Section 1104 of the Federal Aviation Act (49 U.S.C. 1504), is exactly the type of statute to which Exemption 3 refers, because Section 1104 requires that information be withheld by the DOT if its release

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would "adversely effect the competitive position of any carrier in foreign air transportation." As set forth above, the data would have exactly this adverse effect.

Furthermore, foreign carriers do not publicly report information about the cost of their individual airframes and aircraft engines. This lack of available aircraft cost information from foreign carriers, but potential availability of such information from domestic carriers, creates an imbalanced competitive environment to the detriment of domestic carriers. This lack of equal access to competitive, albeit historical cost information, erodes the competitiveness of UPS and other domestic carriers who must purchase aircraft and engines in the same global airframe and engine markets as their foreign competitors.

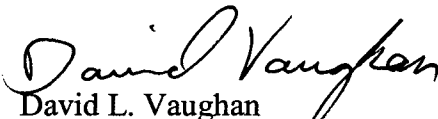
Under Exemption 4 of the FOIA (5 U.S.C. 552(b) (4)), information in agency records may be withheld that is "commercial or financial information obtained from a person and privileged or confidential." As set forth above, these data are of precisely this nature. See National Parks and Conversation Association v. Morton 498 F.2d 765, 769 (D.C. Cir. 1974).

In the absence of a grant of permanent confidential treatment for the subject data, and in the absence of an additional ten year term of confidential treatment, UPS requests that the Department stay its release of the subject data so that this matter may be addressed more fully in a public forum in which all potentially affected carriers may participate.

In closing, UPS respectfully requests that the Department continue to afford confidential treatment to Form 41, Schedules B-7 and B-43 and that such confidential treatment be continued indefinitely or, at a minimum, for ten (10) years. UPS believes that the release of these data is as harmful to UPS today as it would have been ten years ago and objects to the release of the data.

Thank you for your consideration of this matter. Please contact me to further discuss UPS' position on the confidential treatment of the data.

Sincerely,


David L. Vaughan
Counsel to United Parcel Service Co.

CC: Donald W. Bright, Department of Transportation
Buzz Rife, Department of Transportation
James T. Miller, United Parcel Service Co.